

RICHARD BLUMENTHAL
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

456

*TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE INSURANCE AND REAL ESTATE COMMITTEE
JANUARY 27, 2009*

I appreciate the opportunity to speak in opposition to Senate Bill 456, An Act Adopting the National Association of Insurance Commissioners' Interstate Insurance Product Regulation Compact.

As a matter of legal principle and political reality, I am strongly predisposed against any surrender of state authority that protects Connecticut consumers. This Compact seems to compel Connecticut to cede at least some substantial authority -- how much is unclear -- to an interstate entity. Unlike any other past Compact joined by Connecticut, this one binds the state to joint decisions by a formal group of regulators or a Commission. Connecticut may have one vote on the basis of rotating membership -- as a second tier state -- over the approval of financial insurance products.

Under the Compact, the only way to reject approval of particular products -- in effect opt out -- is for the General Assembly to approve legislation or for the Insurance Commissioner to promulgate regulations that clearly articulate that Connecticut is opting out of an entire product standard. Neither process is easy or quick.

Other disadvantages are apparent and important. Challenges to Commission decisions would need to be filed in the home state of the Commission rather than in Connecticut, making legal challenges difficult for Connecticut consumers. Commission standards and procedures adopted today may seem desirable now, but they may be changed over our objections. We are but one state, one voice on the Commission.

I sympathize with the goals underlying the Compact. The Interstate Insurance Product Regulation Compact was developed by the National Association of Insurance Commissioners in response to the insurance lobby efforts in the United States Congress to supplant state regulation of asset-based insurance products such as annuities and life insurance. Many insurance companies were frustrated by the need to comply with 50 different state jurisdictional requirements and regulations concerning these insurance products.

The Compact has valid goals -- to increase efficiencies and reduce costs and time in the regulatory process and to preserve state jurisdiction over asset-based insurance products. The

means to that end are flawed, and need to be recast. Indeed, there may be preferable alternative administrative routes to those goals.

Instead, we should consider developing a uniform law with clear consumer protections rather than a Compact, making Connecticut's application process for approval of insurance products similar to the Commission's in order to facilitate insurance company paperwork. Part of this alternative could be to establish a presumption in favor of state approval of a Commission-sanctioned financial product unless the Commissioner rejects such approval within 45 days of the Commission's approval and filing of an application.

Given our recent experience with credit abuses and subprime misconduct, we should be especially loathed to surrender regulatory oversight or scrutiny. Recent experience teaches that our authority is necessary to protect our citizens.

In addition to these broad and general philosophical concerns, there are a number of specific issues that argue strongly against the Compact:

- Once established, the Compact assumes a life of its own. Now that the Compact has been approved by 32 states and Puerto Rico, it remains in existence even if all but two states withdraw from it. In addition, even in states that have withdrawn, the Compact is still effective for insurance products that were approved by the Commission prior to the state's withdrawal.
- Consumer protections may not be secured. Although the Compact has some vague language preserving from preemption the authority of the state attorney general to maintain an action in court, that language may fail to ensure that all consumer protection laws in this state could be enforced against fraudulent or deceptive marketing practices by an insurer. For example, Conn. Gen. Stat. § 42-110c provides that CUTPA does not apply to any advertisement that is "permitted under law as administered by any regulatory board or officer acting under statutory authority of the state or of the United States." Thus, CUTPA could be eviscerated by Commission approval of advertisements, no matter how poorly conceived or reviewed.
- The Compact contains one-sided appeal rights in favor of insurers. The non-profit Commission has unbridled discretion to approve insurance products. If a product is rejected, the insurer can appeal that decision. Consumer groups, advocates and state agencies are denied similar appeal rights even if the Commission approves a product that is harmful to consumers.
- The Compact fails to guarantee freedom of information rights such as are accorded to Connecticut residents by the Connecticut Freedom of Information Act (FOIA). The Compact provides that the commission provide "reasonable procedures for calling and conducting meetings of the Commission that consist of a majority of Commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions.... " A great deal of public agency work is commonly conducted by subcommittees.

Although the freedom of information standard drafted by the Compact provision commendably provides public access and notice concerning committee meetings, nothing in the Compact prevents a subsequent enactment of a more restrictive or secretive rule conflicting with our Freedom of Information Act.

- Connecticut courts could not hear legal challenges to the Commission's actions by Connecticut consumers or the Attorney General. The Compact specifically states that any legal challenges to the Commission must be heard in the state where the Commission's headquarters is located rather than Connecticut.
- The process for opting out of a standard is cumbersome and uncertain. The Compact provides that a state can opt out of a particular standard by either legislative approval of a new law or Insurance Commissioner adoption of a regulation. The Insurance Commissioner must give notice of such objection within ten days of the adoption of the standard and must find, based on the preponderance of the evidence, that there are "conditions in the State which warrant a departure from the Uniform Standard" and that the standard "would not reasonably protect the citizens of the state." Incredibly, rejection of a standard under the Compact requires more than just the last criterion -- that the standard fails to protect state residents. Meeting that criteria alone should be sufficient to reject any standard. What state law would require more?

Even with all these objections, I remain open to discussions with the Committee and the Insurance Department, as well as the industry, as to measures meeting the understandable concerns that the Compact was designed to address. I have begun such discussions and hope to continue them.